IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

WP(C).No. 31790 of 2006(H)

PETITIONER:

BRAHMAMANGALAM GRAMASWARAJ SERVICE
CO-OP. BANK LTD. NO.2966, CHEMPU, VAIKOM,
KOTTAYAM, REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.P.P.JACOB
SRI.B.MANIMOHAN
SRI.N.T.SATHYAVAN

RESPONDENTS:

---

1. STATE OF KERALA, REPRESENTED BY
DISTRICT COLLECTOR, CIVIL STATION, KOTTAYAM.

2. THE TAHSILDAR,
REVENUE RECOVERY, TALUK OFFICE,
VAIKOM, KOTTAYAM.

3. M.K.MUHAMMED, S/O. KHADERKUTTY,
THATTAMPARAMBIL, CHEMPU, VAIKOM.

ADDITIONAL RESPONDENT

4. SATHYAN, S/O KRISHNAN
KOCHUPARAMBU HOUSE
CHEMPU P.O., VAIKOM
KOTTAYAM

Additional R4 is impleaded vide order dtd. 1-02-07 in I.A.NO.1398/07

BY GOVERNMENT PLEADER SRI.P.K.RAVIKRISHNAN
SRI.N.RAGHURAJ
SMT.K.AMMINIKUTTY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1	TRUE PHOTOCOPY OF THE MORTGAGED DEED EXECUTED BY R3 TO THE PETITIONER DD. 21-03-2000
EXT.P2	TRUE PHOTOCOPY OF THE POSSESSION CERTIFICATE DTD. 09-03-2000 PRODUCED BY R3 TO THE PETITIONER.
EXT.P3	TRUE PHOTOCOPY OF THE ENCUMBRANCE CERTIFICATE DTD. 24-3-00 PRODUCED BY R3 TO THE PETITIONER.
EXT.P4	TRUE PHOTOCOPY OF THE REPRESENTATION FILED BY THE PETITIONER BEFORE R1 DTD. 10-08-04
EXT.P5	TRUE PHOTOCOPY OF THE REPRESENTATION FILED BY THE PETITIONER BEFORE R2 DD. 10-08-04

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

\- -

W.P.(C).No. 31790 OF 2006

\- -

Dated this the 6th day of August, 2007

JUDGMENT

Case of the petitioner in brief is as follows:

Petitioner is a Co-operative society. Third respondent availed a loan by mortgaging the property. Third respondent defaulted. Petitioner filed arbitration case and obtained an award and filed Execution Petition. According to the petitioner, petitioner has got first charge over the property mortgaged to recover the amount due. Respondents 1 and 2 initiated steps against the property for recovery of arrears of sales tax.

2. The prayers in the writ petition are as follows:

> *" 1. Issue a writ of mandamus or other writ or order directing the respondents 1 and 2 not to finalise the sale proceedings including confirmation of sale and issuances of sale certificate etc. to the auction purchaser pending final disposal of the above writ petition.*
>
> *2. Issue a necessary writ or order directing the respondents 1 and 2 to proceed against the properties of the third respondent*

including institution/firm from where arrears are due as well as 15 cents property of the third respondent situated in Sy.No.54/14A and other assets."

3. I heard learned counsel for the petitioner and the learned counsel for the fourth respondent besides the learned Government Pleader.

4. Fourth respondent is the auction purchaser in the revenue sale. According to him, he is the auction purchaser in a sale to enforce the first charge available under the Sales Tax Act. The learned counsel for the petitioner then submits that petitioner is not even served with the order of sale and petitioner seeks to challenge the said proceedings in accordance with law.

In such circumstances, the writ petition is disposed of directing the District Collector, Kottayam to issue to the petitioner the order of sale in favour of the additional fourth respondent made to realise the sales tax arrears from the third respondent within one week from the date of receipt of a copy of this judgment. The sale certificate shall not be issued in favour of the fourth respondent for a period of two weeks from the date

of receipt of a copy of this judgment.

(K.M.JOSEPH, JUDGE)

sv.